

REMARKS

Claim Rejections

Claims 11-14 are rejected under 35 U.S.C. §112, first paragraph. Claims 1-7 are rejected under 35 U.S.C. §112, second paragraph. Claim 2 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of co-pending patent App. No. 10/833,097.

Claim Amendments

The amendments to claims 1 and 11, as set forth above, adopt the suggestions of Examiner Swartz as discussed during the Examiner Interview on March 7, 2006 with Ryan P. O'Connor (Reg. No. 56,693).

Specifically, the amended claim 1 now includes a step (h) that compares the test sample to a control sample, in accordance with the written description (e.g., Example 4). Additionally, the lack of antecedent basis for claims 1-7 is corrected by reciting "tubes" rather than a "tube" in step (d). These amendments have full support from the existing specification and do not add new matter into the application.

The amended claim 11 is now limited to microorganism-specific probes, which is described in and enabled by the existing written description, and does not introduce new matter.

The amendments to claims 9, 10, and 13 simply correct minor grammatical deficiencies in the previously presented claims, and do not introduce new matter.

Double Patenting

To overcome the provisional rejection of claim 2 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of co-pending patent App. No. 10/833,097, following issuance of a patent for one of the present invention and co-pending App. No. 10/833,097, Applicant hereby agrees to file a terminal disclaimer for the remaining patent application. Such terminal disclaimer will be limited in scope to claim 2 of App. No. 10/729,980 and claim 3 of App. No. 10/833,097.

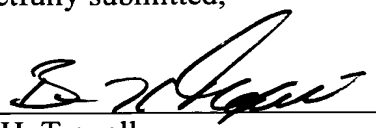
Summary

By this Amendment, Applicant has amended claims 1, 9-11, and 13 of this application. It is believed that the amended claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. §112. The claimed subject matter is described in sufficient detail to enable one having ordinary skill in the art to make and use Applicant's invention without undue experimentation. It is noted that there are no §102 or §103 prior-art rejections against Applicant's claims 1-20.

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested.

Respectfully submitted,

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